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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

The Petitioner, for reply to Respondent's brief, says:

1. The Respondent first sets out the opinion of the Circuit Court of Appeals (91 F. (2d) 894).

2. It is obvious the Court was in error in stating the debtor had no interest in the land when he filed his petition on October 30, 1934. Later in the opinion, the Court conceded he had an interest—the right to redeem. This is all the title he needed to file and give the District Court jurisdiction. See cases in Petitioner's Brief, Page 24-25. Then it proceeded in five

pages of discussion to hold that Subsection (s) did not extend that period. In doing this it held said subsection was properly before the Court. Brief, pages 6, 7, 8, 9, 10, 11.

3. All we desire to say about the Petitioner conveying the land subject to the mortgages to his children and them conveying it back, is that he had an interest in it all of the time because of his liability on the mortgage, his retention of the possession thereof, and his right to redeem from the sale thereof.

4. That the question of his title was not raised in time. That all of the land was conveyed back to him before the foreclosure of the mortgage on the 200 acres: Rec. 9-8 shows: Land conveyed back April 13, 1935.

Judgment on 200 acres May 27, 1935.

Sold July 20, 1935, eight months after petition in bankruptcy was filed. Brief Page 4. Like the facts in (Va.) Wright case.

5. The fatal thing is that the Record shows that the Respondent did not file its motion questioning his ownership of the land or right to file his petition in bankruptcy until July 29, 1936, over one year and four months after the land was conveyed back to him. Rec. 21 (1).

6. It is plain the Respondent could only raise this question in the Bankruptcy Court (which is a Court of Equity) except by an answer and it did not do so until it was too late. This laches amounted to a waiver as to whether the debtor was the proper party to file the petition and the real party in inter-

est on October 29, 1934, and the deed back had cured it all.

7. We contend that a petition in Bankruptcy under Section 75 and its amendments should be considered like a suit in equity. That Equity Rule 43 requires the defendant (creditor) to seasonably answer that it is defective for want of parties. That if this is not done, the question is waived.

> A Federal Suit in Equity 2d Ed. p. 259, citing a number of cases.
> Ibid, p. 261.
> Equity Rules 43-44, Cyc. Fed. Proc., Vol. 3, Sec. 827.

8. It will also be noted that no such question was raised here until after the Act of August 28, 1935, was passed and over 22 months after the petition and schedules (bill) had been filed and 16 months after the debtor had become the absolute owner of the land. Such neglect gave the Respondent no standing in a Court of Equity.

Petition filed October 29, 1934, Rec. 8. Land conveyed back April 13, 1935, Rec. 9. Motion raising question of ownership filed July 29, 1936, Rec. 21.

9. This was not all. His case was pending in the District Court when the amended Act of August 28, 1935, took effect and was continued thereby. On that date he was the absolute owner of the land and had been such since April 13, 1935, and he was such owner on October 11, 1935, when he filed his amended petition under said amended Subsection (s). If all that be true what right had the District Court to strike his land out and refuse to permit

him to amend his petition and denied him the benefits of said amended Act. The District Court and the Circuit Court of Appeals should have given a liberal construction to said Act to carry out its purpose of saving farm homes, instead of a narrow, technical, strained construction which defeated the purposes of said Act.

He became absolute owner April 13, 1935, Rec. 9. Amended Subsection (s) enacted August 28, 1935. 11 U. S. C. A., Sec. 203. Continuing old case, Par. (5) Ibid. He amended his petition October 11, 1935. Rec. 9.

10. Conceding but not admitting that there was some irregularity—that was cured by the deed back to him on April 13, 1935, over a year before the Respondent undertook to question it. Certainly after all irregularities had been removed and the debtor had become the absolute owner of the land, the Respondent could not question his right to the benefits of Section 75 and its amendment. The Respondent was too late. The door had been closed. A Court of Equity should reject such a narrow view as that.

11. That question being waived, it was admitted before the Circuit Court of Appeals and it had no right to question his title. It should have found the debtor's title was admitted; that he had the right to file his petition in bankruptcy on October 29, 1934. The deed back related back to that date. His petitions to amend were verified and no answer or denial was ever filed. Hence they were admitted. Rec. 2 to 5, 8-9. And the Circuit Court had no right to disregard them.

12. The Court finally admits that on August 28,

1935, he had an interest—the right to redeem—and had such an interest on October 11, 1935, when he amended his petition but contended that right ended on July 29, 1936, unless the amendment of August 28, 1935, operated to extend his right of redemption. Opinion in Brief, p. 6 (middle of page). Thus the Court held he and his land were properly in Court and that he had the right to redeem but that Congress could not extend the period of redemption to August 28, 1938. Then the Court proceeded to review the Lowman and other cases and held Subsection (s) was void. Brief Page 6, 7, 8, 9, 10 and 11. The only thing it was deciding was that this Subsection (s) was unconstitutional. The record shows there was nothing else to decide. The decision that it was unconstitutional was necessary to decide the case before it. It could not affirm the decision of the District Court without holding Subsection (s) void. It was a clean-cut decision that the Moratorium Act of Congress was null and void and that the debtor should be denied the benefits thereof. His only remedy was to appeal to this Court.

This Court in the recent case of Indiana Ex Rel. Anderson vs. Brand (Jan. 31, 1938) held in substance, that it had the right to examine the opinion below to ascertain what question was raised and decided (82 Adv. Opinions 447).

13. When the Court reads these five pages it will find that the trouble was that the Honorable Circuit Court of Appeals made the mistake of following the Lowman Case (its own decision) instead of follow-

ing the decision of this Court in (Va.) Wright vs. Mountain Trust Co., 300 U. S. 440, 81 (L. Ed.) 736. The Lowmon Case was before this Court in the above case and this Court could not have held the Act valid without rejecting the doctrine of said case. It could not have removed the conflict without overruling it.

14. Then to clinch the matter, the Respondent on page 11 of its brief admits the question before the Court of Appeals was whether Subsection (s) extended the period of redemption until August 28, 1938.

15. After the Respondent thus admits in one breath that the question before the Court was whether Subsection (s) extended the period of redemption how can it in the next claim that some other technical question was before the Court, especially where it waited 16 months after the debtor became the absolute owner of the land before it ever questioned his ownership and his right to file under Section 75 and amended Subsection (s).

16. Then after admitting that the question before the Court was the validity of Subsection (s) it wastes 4 pages of its brief (pages 12, 13, 14 and 15) in rehashing the matter about these deeds. This in the face of the fact that it never questioned the debtor's title to the land and his right to file his petition in Bankruptcy for 16 months after he became the absolute owner of the land. He has owned it ever since then during all of these proceedings and owns it now. The Respondent's position that these deeds to the children has anything to do with the

real question in this case is absurd and should have been rejected by the lower Court as impertinence.

Equity Rule 21.
A Federal Suit in Equity (2d Ed.), p. 346.

17. The petitioner could not have prepared his petition without including this land in his schedules. He was still liable for the mortgage debt. How can it be said he had no interest in the land?

He remained in possession after the deeds to his children, assisted in farming it and received a part of the rents and profits thereof. Rec. 4 (Explanation)—As stated above, this was admitted by the failure to deny or answer it. Rec. 2, 3, 4, 5, 6, 7, 8 and 9.

18. On page 16 the Respondent undertakes to give the objections why the petition herein should be denied. The first has been sufficiently answered above. The second is misleading. His petition in bankruptcy as to the 80.31 acre tract was filed October 29, 1934, during the year of redemption and before the deed was delivered and as to the 200 acre tract the petition in bankruptcy was filed before the sheriff's sale. The 80.31 acre tract was sold July 12, 1934. Brief, p. 3. Original petition filed October 29, 1934. Rec. p. 8. The 200 acre tract not sold until July 20, 1935, nine months after the petition in bankruptcy was filed. Brief, p. 4.

19. The fallacy of this reasoning is that Respondent is trying to use the Law of Indiana to restrict the powers of Congress to enact laws on the subject of bankruptcies.

The third is a mere assertion, that there is no conflict between the instant case and this Court's decision in (Va.) Wright Case.

This Court in the latter held that this Subsection applied to all cases whether filed before or after the sale or where the year had commenced to run. It did not intend to limit its decision only to cases where the petition had been filed before the sale and the Circuit Court of Appeals had no authority to put such a limitation thereon. If it had so meant it would have said so. ("If it were not so I would have told you").

There is a conflict. That conflict will not be removed until this Court overrules the decision in the Lowman Case and in the instant case. Thousands of farmers have turned their faces for the last time on their homes because of these decisions.

20. The Respondent takes five pages for argument. Brief 17-21. All of the points in the argument have been answered above and will not be noticed further here except (1): We oppose the position that the Lowmon Case (79 F. (2d) 887) was not overruled in the (Va.) Wright decision of this Court and—that the Lowmon Case was only mentioned by this Court as a "basis for granting certiorari." It was mentioned because it was the cause of the conflict. Respondent is trifling with words. If the Lowmon Case "was the basis of granting certiorari" then it was before the Court and necessarily had to be considered by this Court. The Court cited it and gave the report in which it is found. Hence, it must

have read it and found that it was a case where the petition in bankruptcy had been filed after the sheriff's sale and after the year had commenced to run. The Court of Appeals held that Congress could not extend the period of redemption. This Court held that it could. In so holding it rejected the doctrine of the Lowmon Case and disapproved and overruled it.

Besides this, the records of Congress show that the committee in charge of Subsection (s) in the Senate and House reported that it applied in all cases whether the petition in bankruptcy was filed before or after the sale of the land under the State law. We are informed by Counsel who participated in the oral argument in the Wright Case in this Court that it was so stated in that argument and that this Court must have understood it. The Respondent misstates the law of Indiana when it says the mortgage was merged in the decree. It is just the opposite. The lien continues to the end of the year. The debtor continues to be the owner of the land and the purchaser has no title. The year of redemption is not sold or bid on. All he has is the right to a deed at the end of the year. See cases cited in Petitioner's Brief on page 24, Point (j). Also Knapp vs. Building, etc., 7 N. E. (2d) 938.

And except (2) the Respondent argues that the mortgagee had gained some right under the Indiana law and decisions which would conflict with and restrict and powers of Congress and of this Court.

The subject of bankruptcies (including the power to impair contracts) has been expressly delegated to

Congress. Its acts on that subject and the decisions of this Court thereon are supreme and cannot be restricted by the laws of Indiana or decisions of its Courts.

Wherefore the petitioner prays this Court to grant his petition for a writ of certiorari and on the final hearing to reverse the order and judgment of said Circuit Court of Appeals.

Respectfully submitted,

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